REMARKS/ARGUMENTS

Favorable reconsideration of this application in light of the following discussion is respectfully requested.

Claims 6, 8, 11, 13, 38, 40, 43 and 45 are presently active in this case, no claims amended herein.

In the outstanding Office Action, Claims 6, 8, 11, 13, 38, 40, 43 and 45 were rejected for obviousness type double patenting over claims 6, 10 and 12 of U.S. Patent No. 6,751,221; Claims 6, 8, 38 and 40 were rejected under 35 U.S. C. 102(e) as being anticipated by U.S. Patent 6,021,263 to Kujoory; and Claims 11, 13, 43 and 45 were rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,021,263 to Kujoory in view of U.S. 5,790,171 to Klopfer.

In response to rejection under the judicially created doctrine of double patenting, Applicants herewith file a terminal disclaimer in compliance with 37 C.F.R. §1.321 thereby overcoming the double patenting rejection of Claims 6, 8, 11, 13, 38, 40, 43 and 45. For the record, Applicants note that the "filing of a terminal disclaimer simply serves the statutory function of removing the rejection of double patenting, and raises neither a presumption nor estoppel on the merits on the rejection." Quad Environmental Technologies Corp v. Union Sanitary District, 946 F.2d 870, 874, 20 USPQ2d 1392, 1394-5 (Fed. Cir. 1991).

Turning now to the merits, Applicants' independent Claim 6 recites a data transmitting node connected with a physical network. The node includes a first transmission unit for transmitting a control message in a case of transmitting information data to a receiving node connected with the physical network or another physical network. The control message includes an IP (Internet Protocol) address information of a data transmission destination, a header or channel information dependent on the physical network, and an information indicating a required communication resource so as to notify a network

connection device on a communication path that the information data that pass through the communication path established by the control message are requiring as much communication resource amounts as indicated. Also recited is a second transmission unit for transmitting the information data containing the header or channel information for which the required communication resource is reserved, to the receiving node.

Thus, Claim 6 is directed to a data transmitting node, which is a single node on a physical network. The data transmitting node transmits a control message including information indicating a communication resource amount to be required by the information data to pass through a communication path established by the control message to a network connection device on that communication path. In this way, a network connection device on that communication path can ascertain the communication resource amounts required by the information data to be subsequently transmitted. Independent Claim 38 includes similar features in method claim format.

Kujoory discloses a system and method for management of Asynchroneous Transfer Mode (ATM) virtual circuits having resource reservation protocol. However, Fig. 4A of Kujoory discloses message exchanges among separate "Destination" and "Source" nodes on a network. The Destination node receives data from the Source and transmits only a RES message (a control message). Thus, the Destination of Kujoory cannot possibly be interpreted as corresponding to the first transmitting unit of Claim 6 (and in method claim format in Claim 38) because the Destination node does not transmit data at all (it only transmits a control message).

The system of Fig. 4A also shows a PMD (Policy Mapping Database), which is an entity connected with the Source, but not provided on the network. Thus, the PMD of Kujoory cannot possibly be interpreted as corresponding to the claimed network connection device, because the PMD is not a device on a communication path of the physical network

for transmitting the information data, as also required by Claims 6 and 38. Applicants submit that, at best, it is only reasonable to consider Kujoory's Source as corresponding to the claimed data transmitting node. Even with this reading of Kujoory, the reference fails to disclose any teaching that the Source transmits a control message including information to notify the communication resource amounts required by the information data to pass through the communication path established by that control message, to a network connection device on that communication path.

Thus, Kujoory actually fails to disclose anything corresponding to the claimed first transmission unit as a constituent element of the data transmitting node, and Kujoory cannot anticipate independent Claims 6 and 38. As dependent Claims 8 and 40 depend from Claims 6 and 38 respectively, these dependent claims also distinguish over the cited reference to Kujoory.

Independent Claim 11 is directed to a data transmitting node connected with a physical network. The node includes a first transmission unit for transmitting a control message in a case of transmitting information data to a receiving node connected with the physical network, or another physical network. The control message includes an IP (Internet Protocol) address information of a data transmission destination, a header or channel information dependent on the physical network, and an information on a format of the information data to be transmitted according to the header or channel information so as to notify a network connection device on a communication path that the information data that pass through the communication path established by the control message will be in the format as indicated. Also recited is a second transmission unit for transmitting the information data in said format which contains the header or channel information to the receiving node.

Thus, Claim 11 is directed to a data transmitting node, which is required to transmit a control message including an information on a format of the information data to be

transmitted, in order to notify the format of the information data to pass through the communication path established by that control message, to a network connection device on that communication path. Independent Claim 43 includes a similar feature in method claim format. In this way, a network connection device on that communication path can ascertain the format of the information data to be subsequently transmitted.

The Office action correctly admits that Kujoory fails to explicitly teach that the control message will be in the indicated format, but cites the encoder 14 in Fig. 3 of Klopfer as teaching this feature. However, the encoder 14 in Klopfer simply converts the input baseband audio/video information in NTSC signal format into the MPEG ATM format suitable for transfer through the ATM network. Note that this MPEG ATM format is not indicated in any control message transmitted from the source 11 of Klopfer. In fact, Klopfer fails to disclose any teaching for the source 11 to transmit a control message including an information on a format of the information data to be transmitted, in order to notify the format of the information data to pass through the communication path established by that control message, to a network connection device on that communication path, as required by Claims 11 and 43.

Consequently, Klopfer actually fails to disclose anything corresponding to the claimed first transmission unit as a constituent element of the data transmitting node, and the combination of Kujoory and Klopfer does not teach all of the features of either Claims 11 or 43. As dependent Claims 13 and 45 depend from Claims 11 and 43 respectively, these dependent claims also distinguish over the cited references.

Consequently, in view of the above remarks, no further issues are believed to be outstanding in the present application and the present application is believed to be in condition for formal allowance. An early and favorable action is therefore respectfully requested.

Respectfully submitted,

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